

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

FILED  
CLERK'S OFFICE  
2006 JUL 17 P 3:18

MARGARITA MUNOZ,

Plaintiff,

v.

UNITED STATES,

Defendant

U.S. DISTRICT COURT  
DISTRICT OF MASS.

Case No. 04-11699

**MOTION FOR STAY OF PROCEEDINGS ON 28 U.S.C. § 2255 PETITION**


The plaintiff, Margarita Munoz, respectfully moves for a stay of the proceedings in the above-captioned case. As grounds for this motion, Ms. Munoz asserts the following:

1. As found in this Court's December 15, 2005 Memorandum and Order ("Order"), Ms. Munoz pleaded guilty to certain charges in District Court Case No. 99-CR-10407-EFH-2 on April 18, 2002, and was sentenced by this Court to 120 months imprisonment on May 22, 2002.
2. As the Court found in its Order, due to a clerical mishap, Ms. Munoz's notice of appeal dated May 24, 2002 was not discovered.
3. In the above-captioned case, Ms. Munoz filed a petition for habeas corpus relief pursuant to 28 U.S.C. § 2255. In this petition, Ms. Munoz asserted three grounds - - one based on the denial of her right to a direct appeal and two based on *Blakely* and ineffective assistance of counsel grounds.
4. This Court granted Ms. Munoz relief on one ground of the petition - - *i.e.*, the

denial of her direct appellate rights. Currently she has an appeal pending in the First Circuit on the criminal case (Appeal No. 06-1781).

5. The First Circuit docketed two other appeals, but then directed Ms. Munoz to file motions for voluntary dismissal or to seek a certificate of appealability. Ms. Munoz has filed two motions for voluntary dismissal.
6. Because this Court has not had reason yet to address the two additional claims (*Blakely* claims and ineffective assistance of counsel claims) raised in the 2255 petition, Ms. Munoz respectfully requests that this Court stay the proceedings in this case pending the resolution of her direct appeal.
7. As grounds for this Motion, Ms. Munoz asserts that this Court should rule on Ms. Munoz's two additional claims after the resolution of her direct appeal in the criminal matter. In usual circumstances, a § 2255 motion lies only after the resolution of a direct appeal. *See United States v. Diaz-Martinez*, 71 F.3d 946, 953 (1<sup>st</sup> Cir. 1995); *United States v. Gordon*, 634 F.2d 638, 638-39 (1<sup>st</sup> Cir. 1980).
8. Under current habeas rules and practice, Ms. Munoz may only be able to bring one habeas petition. *See Jamison v. United States*, 244 F.3d 44, 47 (1<sup>st</sup> Cir. 2001). Claims that cannot be resolved on direct appeal - - particularly ineffective assistance claims - - will need to be presented more fully to this Court should Ms. Munoz not succeed on her direct appeal. A stay of the present action will preserve Ms. Munoz's habeas rights and also will not cause prejudice to the government. *See Stewart v. Martinez-Villareal*, 523 U.S. 637, 643-44 (1998) (petitioner entitled to adjudication of all claims presented in petition).

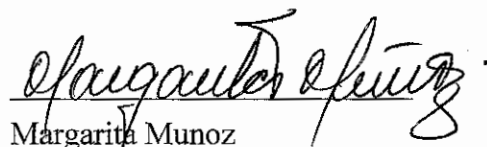
Respectfully submitted,

  
Margarita Munoz

Certificate of Service

I, Margarita Munoz, swear that on July 11, 2006, I sent by first class mail a copy of this document to:

**Andrew E. Lelling, Esq.**  
United States Attorney's Office  
Suite 9200  
1 Courthouse Way  
Boston, MA 02210

  
Margarita Munoz